PROVINCE OF ALBERTA

OFFICE OF THE ETHICS COMMISSIONER

ANNUAL REPORT

OFFICE OF THE ETHICS COMMISSIONER

Robert C. Clark, Commissioner

September 11, 2000

Hon. Kenneth R. Kowalski
Speaker of the Legislative Assembly
325 Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Mr. Speaker:

It is my honour and pleasure to submit to you the Annual Report of the Office of the Ethics Commissioner, covering the period from April 1, 1999 to March 31, 2000.

This report is submitted pursuant to section 44(1) of the *Conflicts of Interest Act*, Chapter C-22.1 of the 1991 Statutes of Alberta.

Yours very truly,

Robert C. Clark
Ethics Commissioner

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ETHICS COMMISSIONER'S REMARKS

"Ethics" has become a matter of growing interest and concern to Canadians and has become an issue in all parts of the world. It has always been a matter of importance to those of us in ethics agencies but it is gratifying to see that it has currency and importance throughout the private sector, at all levels of governments in many countries, and even at the personal level.

Canadian businesses have adopted a code of ethics for their operations in foreign countries. The *International Code of Ethics for Canadian Business* comments that Canadian business "can make a difference within our sphere of influence" and "business should take a leadership role through establishment of ethical business principles." The world now watches how business is conducted and commentaries are offered on the actions of companies -- both for what they have done and even for what they have not done.

Professor Errol Mendes, Director of the Human Rights Research Education Centre at the University of Ottawa, has identified five generations of corporate codes of conduct. They are: conflict of interest; commercial conduct; employee and other third party concerns; community and environmental concerns; and accountability and social justice. Businesses are responding to the watchful public and are ensuring that their codes of conduct incorporate society's greater expectations.

There are a number of ethics agencies and ethics consultants that now exist who offer counsel and guidance to firms in creating codes of conduct, reviewing actions that may violate a code of conduct, and offering courses and seminars for individuals to assess and improve their own ethical standards.

> Be honorable yourself if you wish to associate with honorable people.
> -- Welsh proverb

Individual honesty and integrity is a necessary element in the creation or development of an ethical society. The public needs to see its leaders demonstrate those qualities. In a recent speech to the Calgary Chamber of Commerce entitled "Living the Ethical City," Calgary Mayor Al Duerr commented on ethics and its importance to the quality of life in Alberta. He said:

> A new strategy for the development of Calgary means taking a holistic approach to how we make decisions. The ethics of this city will be defined not so much by what we are, measured by traditional methods, but by who we are and how we treat one another.

> No man who continues to add something to the material, intellectual and moral well-being of the place in which he lives is left long without proper reward.
> -- Booker. T. Washington

The amendments to the *Conflicts of Interest Act* -- passed by the Legislature in 1998 -- have now been proclaimed. The amendments add a preamble to the Act that reflects the Legislature's commitment to meeting the Alberta public's demand for integrity in its elected officials.

Additionally, the amendments will provide a mechanism for review of the Act. It is important that codes of conduct (or legislation, in this case) are constantly monitored and updated to reflect societal expectations relating to transparency, accountability, integrity, and ethical behaviour.

> The integrity of men is to be measured by their conduct, not by their professions.
>
> --Junius

Sadly, based on polling results as reported in the media from time to time, political leaders seem to be held in low regard by the public. It may be that workloads and other commitments do not afford politicians opportunities to speak out on issues of ethics and integrity or to become involved in organizations and conferences that exist to promote ethics.

> Be as you wish to seem.
>
> -- Socrates

In a "wired" society, the people have more access to information about issues before politicians. Constituents will assess their leaders by their responses to the issues and the public's concerns about those issues. At times, leaders must make unpopular decisions. How they handle and communicate those decisions will be reflected in the public's view of the quality of their leadership -- and the honesty and integrity of the processes followed.

Elected officials must be ever mindful of their leadership roles and set high standards for themselves and their colleagues. Every action and decision of elected representatives is judged in terms of Members' commitment to the values their constituents hold dear.

> The truth of the matter is that you always know the right thing to do. The hard part is doing it.
>
> -- Norman Schwarzkopf

My role as Ethics Commissioner is to provide advice and recommendations on Members' obligations and to review occurrences where someone feels those obligations have not been met. "Ethics" are really a combination of good, common sense and an application of a common value system. Nevertheless, there may be "grey" areas where the question asked is: "Is this legal?" Doing the right thing is most often easy. Questions arise when competing values may be involved -- such as an offer for corporate sponsorship for travel or hosting public events "to save the public some money." Again, most people instinctively know when an offer is "too good to be true." They also know when rationalizing the acceptance of a gift is not

enough to counter the conflict of interest that may result.

> Integrity has no need of rules.
> -- Albert Camus

I believe my office performs a useful role in this regard. No matter how sure one is of the right thing to do, it is sometimes useful to have someone else confirm your decision. And when one is not really sure where the lines are drawn, it can be helpful to discuss it with someone who has no involvement in the issue.

As stated in past reports, I believe my most important function is providing advice **before** a Member acts. I am pleased to say in this report that Members still use my office for this purpose.

In the area of investigations, my office was more active this year than in the 1998/99 reporting year, when no investigations were conducted. Several of the requests for investigation received by my office this past year had some connection with the pursuit of "political interests." I will comment on that further in the section of this report dealing specifically with investigations.

In the section of this report on professional associations, I will discuss recent activities within my office where we have established relationships with organizations inside and outside Alberta. These associations provide a useful external perspective on our own operations and provide a mechanism for monitoring ethics issues generally.

I wish to express my appreciation to my staff for their advice and support over the past year. I wish to particularly thank those members of my staff in the Office of the Information and Privacy Commissioner who provide reception, financial, and other administrative support. As always, I would single out Karen South and Frank Work for their support and work. I am proud of the team we have in Alberta.

Our modest budget has, for the eighth straight year, not been completely expended. Details of our expenditures are set out at the conclusion of this report.

DISCLOSURE STATEMENTS

No significant changes were made to the disclosure forms for either Members or Senior Officials in this reporting year. However, as a result of one investigation, we did review the forms for Members to determine whether or not we were requesting and receiving information adequately. The forms asked the right questions but we feel Members may not, over time, be certain of the information that they have provided to us over the years, as required under the *Conflicts of Interest Act*. Consequently, when Members next file with us, they will be provided with a summary of all disclosure statement information relating to their situation. Members

will be asked to review the summary carefully and update it accordingly.

Similar consolidated statements will be prepared for Senior Officials.

Late filings continue to occur. I am at a loss to understand why, given the efforts my office has made to simplify the forms and to assist in the completion of them. I may have to set a firm deadline and refuse extensions for any reason other than medical ones. I hope that Members and Senior Officials will cooperate fully and such a step will be unnecessary.

INVESTIGATIONS

Investigations conducted during 1999-2000 are summarized below. As in past years, we conducted fewer investigations than were requested.

Under the *Conflicts of Interest Act*, it is important that a request for investigation be clearly stated to me. A practice appears to be developing whereby I receive requests to comment on someone else's actions or behaviour or the writer simply states "I wish to file a complaint."

My response in the former case is to advise the writer that I do not comment on another Member's behaviour. The Act does not provide a mechanism whereby I can provide advice to someone other than the Member about that Member's actions. Similarly, "a complaint" is not a "request for an investigation." When I get a "complaint," I may meet with the person making the complaint to determine whether an investigation is actually being requested. In the case of persons who are more familiar with the legislation (i.e. Members of the Assembly or their staffs), I may simply respond to "complaints" by advising those persons that there must be a specific request for an investigation for me to proceed.

I have great concern about the practice of issuing a news release to the media and attaching a letter written to me regarding a request for an investigation. There is nothing in the legislation that prohibits this action, nor am I saying that Members have no right to do so.

However, I would caution Members to consider the damage to a person's reputation that can result from allegations of impropriety. When one Member's reputation is damaged without grounds, the regard in which the public holds all Members is reduced. It is also, I would suggest, discourteous to release such letters to the media before my office has had a chance to read them and decide whether or not an investigation will be conducted. This practice is especially unfair considering that the Act does not allow me to divulge information previously (as in the case of advice to a Member) or currently before me. I would ask that Members think about this practice of releasing information to the media.

Investigation involving Hon. Stockwell Day, Provincial Treasurer

Questions were raised regarding the Provincial Treasurer's use of the Risk Management and Insurance Fund administered by the Minister's department. The insurance coverage related to a lawsuit launched against the Treasurer by a private citizen. An investigation was conducted to determine whether the Treasurer had taken part in the decision to provide coverage of his own claim or used his office or powers with respect to the decision.

In my report to the Legislature, I outlined the history of the insurance coverage provided to Members as it related to libel or defamation actions.

I concluded that the Treasurer had not taken part in the decision on his own case nor had he used or attempted to use his influence regarding the decision.

I did express some concerns regarding the process of submitting claims for coverage. I have been advised by the Speaker of the Assembly that measures have been taken to address those concerns.

Investigation Involving Howard Sapers, Member for Edmonton-Glenora

As a result of my investigation involving the Risk Management Fund, Mr. Sapers wrote me regarding his actions relating to a lawsuit filed against him in 1996. After meeting with Mr. Sapers, it was agreed that an investigation would be conducted to determine whether he had breached section 7 of the *Conflicts of Interest Act* respecting fees, gifts and other benefits.

Mr. Sapers had been advised by the Speaker's office that Mr. Sapers should himself obtain legal counsel to defend against the lawsuit. He did so. The lawyer handling the case offered to contribute his fees to the Liberal Party of Alberta and a tax receipt was issued to the lawyer.

I decided that Mr. Sapers did receive a benefit in this case and that the benefit was related directly or indirectly with the performance of his role as a Member. Acceptance of such a benefit is prohibited by section 7 of the Act.

I found that Mr. Sapers was in breach of the Act but recommended no sanction be imposed since the original advice provided to Mr. Sapers was wrong and he should have been directed to submit a claim for coverage to the Risk Management and Insurance Division of Alberta Treasury.

Investigation Involving Janis Tarchuk, Member for Banff-Cochrane

Alberta Treasury was considering re-appointing Mrs. Tarchuk to the Local Authorities Pension Plan Board (LAPPB). A question arose regarding her ability to serve on that Board.

I met with Mrs. Tarchuk and we agreed to proceed by way of investigation and report to the Assembly.

Under section 6 of the *Conflicts of Interest Act*, Members are disqualified from serving on the boards or agencies set out in the Schedule to the Act. One of the boards listed in the Schedule is the LAPPB.

I therefore found that Mrs. Tarchuk had breached the Act. I made no recommendation for sanction for several reasons: Mrs. Tarchuk had disclosed her membership on the Board to me; it was listed on her public disclosure statement; and Alberta Treasury and Alberta Justice had reviewed the matter at the time of her initial appointment and had not discovered that the appointment was not allowed.

Investigation Refused

I received a request for an investigation involving Mrs. Burgener, the Member for Calgary-Currie. Mrs. Burgener's husband is involved with the Human Resources Group (HRG) which has an interest in private health services in Calgary. Mrs. Burgener asked questions in the Legislature during Oral Question Period on the subject of Bill 11, *Health Care Protection Act*. It was alleged that Mrs. Burgener's questions were intended to further the interests of HRG in seeing the Bill passed by the Legislature.

I declined the investigation because Mrs. Burgener had previously obtained written advice from me with respect to this type of legislation, in light of her husband's interest in HRG. Under the Act, a Member who has sought my advice, and who has complied with that advice, is protected from any further proceedings. Even if someone believes my advice to a Member is wrong, the Member is still protected as a result of seeking and relying on my advice.

I provided a written response to the Member who requested the investigation and that response was tabled in the Legislature by the Speaker.

Other Requests for Investigations

Some calls to my office related to constituents' complaints that they were treated "rudely" or "dismissed" when they presented their opinions or concerns to their Member. While a citizen has a right to be heard, there is no guarantee that all voices heard will receive a favourable response. This type of interaction between Members and constituents is not a "conflict of interest" under the Act. In most

cases, the constituent asks if the behaviour is "ethical," and an explanation of the Act is generally provided.

Some of the allegations raised against Members in the past year dealt with Members' behaviour or actions that were in pursuit of alleged political interests. For example, some concerns might relate to Members' communication of their positions on issues. Some readers of the communication may view it as a political issue or as an effort to "get re-elected."

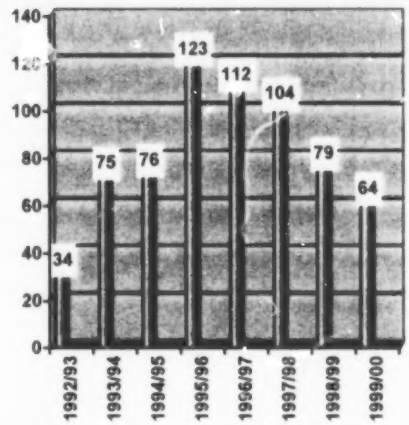
My office has taken the position that furthering "political interests" will rarely be the same as furthering "private interests." In order for a breach of the *Conflicts of Interest Act* to occur, a private interest must be involved.

"Political interests" can be linked to many actions taken by Members -- support for their party's position, speeches on legislative action taken, constituency visits, or raising issues on behalf of certain constituents. I do not consider those "private interests" and persons who raise allegations on such issues are advised of my position and are provided with an explanation of the legislation.

CASE COMMENTARIES

The following chart shows the number of requests for advice received by my office during 1999/2000. This figure includes requests from Members of the Legislative Assembly, Senior Officials, and public servants other than designated Senior Officials. This area of my responsibilities continues to be, I believe, the most important role my office plays.

Figure 2: Requests for Advice



Private Interests

As in the past, this is the area that generates the most requests for advice. When Members have concerns regarding legislation or motions before the House in relation to their outside, private interests, they request my advice on how to proceed. Under the amendments to the Act, any time a Member withdraws from the Legislature or one of its committees or from Executive Council or one of its committees, my office must be advised of that withdrawal. Documentation relating to the withdrawal of Ministers from Cabinet is held in confidence.

Campaign Activities

There were no by-elections held during this reporting year, although one Member did resign from the House. There were no provincial leadership campaigns; however, one Member of Cabinet announced his candidacy for the leadership of a federal party. That Member took a leave of absence from Executive Council on March 28, 2000, to participate in that leadership campaign. I approve of that action as it reduces the appearance that public and purely political interests are mixed

Constituency Work

No questions were raised this year with respect to constituency offices. Staff in constituency offices did seek advice on "ethical" issues and were advised to consult the Code of Conduct for public servants or the Legislative Assembly Office. My office does, from time to time, comment on how the legislation would affect a Member of the Legislative Assembly in a similar situation.

Members of the Executive Council

Generally, the questions raised by members of Executive Council relate to investments and investment restrictions on these individuals. Additionally, questions relating to travel sponsored by other agencies or private sector groups were also raised.

Outside Employment

Members, including members of Executive Council, raised questions concerning their ability to serve on certain boards, agencies, or other organizations. Potential conflicts were discussed in relation to any funding or decision-making roles that the Member might be involved with relating to the outside body.

Certain Members also raised questions relating to their spouses' employment or participation in community service roles or organizations.

Blind Trusts

An amendment to the *Conflicts of Interest Act* will allow Members to claim reimbursement for the costs associated with their blind trusts. No such claims were made to year-end (March 31, 2000).

Contracts with the Crown

From time to time, a Member will have a personal concern relating to, for example, the Member's real property or the Member's participation in assistance programs for education, housing, or businesses. Members with such concerns are asked to provide as much detail as possible with respect to the program under which an application may be made. The request for advice is considered under section 9 and Members are advised that

they must meet the criteria set out in that section:

- the Member must meet the eligibility requirements of the program;
- the Member must not receive any preferential treatment with respect to his or her application; and
- the Member must not receive any special benefit not available to others.

Direct Associates

Some Members requested advice regarding their private corporation's ability to participate in certain initiatives or public programs. Section 9 applies.

As noted above in the section on "Outside Employment," the involvement of a direct associate -- particularly a Member's spouse -- with respect to charitable or community service boards was discussed.

Fees, Gifts and other Benefits

As noted in past years, free air travel remains the most common "gift" offered to Members. In most cases, the offer is declined due to some real or potential relationship between the Member and the entity offering the travel.

The issue of legal services for Members who choose not to use the Risk Management and Insurance Fund of Alberta Treasury also generated discussion in my office this past year.

We canvassed our colleagues in Ontario and Ottawa with respect to their experiences. Since each jurisdiction seems to have its own unique approach to this issue, we ultimately relied on a legal interpretation of Alberta's legislation. It was our conclusion that the offer of free legal services is a "benefit" under the Act that cannot be accepted by a Member.

Questions were raised with respect to party fundraising on behalf of a Member to defray legal costs. However, section 7 of the *Conflicts of Interest Act* says that a Member cannot accept a benefit from anyone other than the Crown if there is a direct or indirect connection between the benefit to the Member and the Member's duties. The Act, therefore, does not allow a Member to accept a benefit from his or her party if the benefit can be connected directly or indirectly to the Member's duties as an MLA. This does not apply to reimbursement of expenses from a party to an MLA in the Member's capacity as party leader. In Alberta, all party leaders who are Members of the Assembly, disclose funds received from their parties where those funds relate to leaders' expenses.

Senior Officials

One of the benefits of my yearly meetings with Deputy Ministers and certain other Senior Officials is an opportunity to discuss what various departments, boards or agencies are

doing with respect to conflict of interest issues or codes of conduct.

Comprehensive codes were developed by two public bodies this past year. I was impressed with the quality of the content and the depth and variety of issues covered.

One issue in particular is raised frequently with respect to Senior Officials, namely "post-employment." A number of Senior Officials have left public service in the last four or five years and have been hired by industries or sectors that are regulated or connected in some fashion with the Senior Official's former public responsibilities.

There are currently no rules with respect to post-employment for Senior Officials. This issue is not within my mandate. I raise it here because it continues to be an issue on which I receive questions from Senior Officials and the media.

PROFESSIONAL ASSOCIATIONS

In October, I attended the annual meeting of the Canadian Conflict of Interest Commissioners (CCOIN) in Victoria. Since that time, a number of changes in Commissioner appointments have occurred across the country.

Manitoba is now the only jurisdiction without a Commissioner responsible for conflict of interest issues for its provincially-elected officials. I served as Acting Conflict of Interest Commissioner for the Northwest Territories during this reporting period. That arrangement will cease in 2000. Nunavut has chosen Robert Stanbury as its Conflict of Interest Commissioner. New Brunswick has appointed Stuart Stratton; Prince Edward Island has appointed Neil Robinson; and Saskatchewan has named Gerry Gerrand as both its Conflict of Interest Commissioner and Information and Privacy Commissioner. I look forward to meeting and working with them.

The 2000 CCOIN meeting will be held in St. John's, Newfoundland, on September 30.

In December, I attended the annual conference of the Council on Governmental Ethics Laws (COGEL) in Providence, Rhode Island. As noted last year, I served on the Steering Committee for COGEL and chaired the Awards Committee. The COGEL Award was presented to an elected official for the first time in the history of COGEL. It was given to Christopher Shays for his work relating to campaign finance reform. At the December meeting, I was again named to the Steering Committee and am serving as President-Elect. This year's conference will be held in Tampa Bay, Florida, in December.

Karen South from my office has attended Ethics Roundtable meetings in Calgary and, as a result of those meetings, has become a member of the Ethics Practitioners Association of Canada (EPAC). The meetings in Calgary have been organized by an EPAC member and bring together a wide variety of ethics practitioners

from both the public and private sectors in Calgary.

PUBLIC INFORMATION

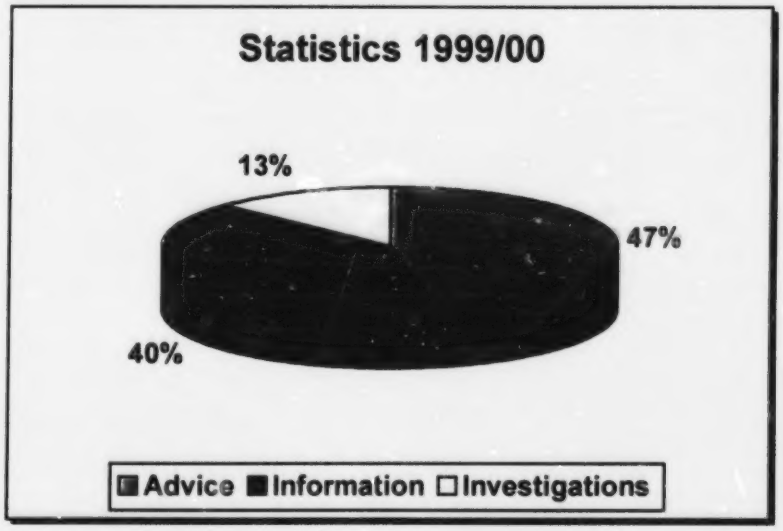
I continue to accept speaking engagements whenever the opportunities arise. Each year, I speak to the Legislature Pages and the Forum for Young Albertans on both roles I perform for the Legislative Assembly.

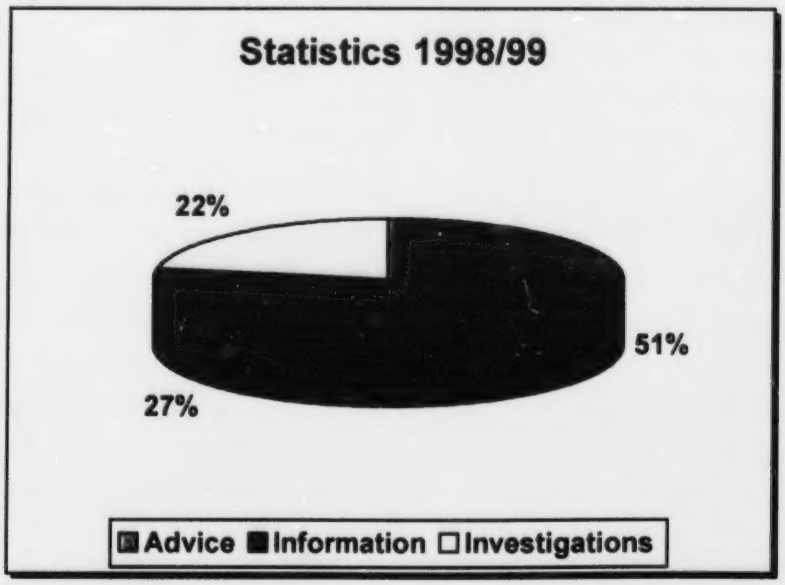
Publications

The office brochure has not been changed since 1992 when it was first published. As a result of the amendments that are now in force, that brochure is under review and monies have been budgetted for 2000-01 for publication of a new brochure.

COMPARATIVE STATISTICS

The pie charts below show the percentage of requests received by our office that dealt with information, investigations, or provision of advice.





BUDGET

	1996/97 Actual Expenditures	1997/98 Actual Expenditures	1998/99 Actual Expenditures	1999/2000 Estimates
SALARIES, WAGES AND EMPLOYEE BENEFITS	$111,041	$117,937	$134,982	$132,980
Travel	$ 9,927	$ 3,509	$ 14,000	$ 15,000
Insurance	865	1,164	1,000	1,000
Freight and Postage	513	196	300	300
Rental of Property, Equipment & Goods	4,790	3,624	5,750	5,750
Telephone & Communications	1,024	767	2,000	2,000
Repair & Maintenance of Equipment	118	—	1,000	1,000
Professional, Technical & Labour Services	9,536	12,343	28,000	38,000
Data Processing	363	340	5,200	8,500
Hosting	368	717	500	500
Materials and Supplies	2,371	3,182	5,000	10,000
SUPPLIES AND SERVICES	$ 29,875	$ 25,842	$ 62,750	82,050
TOTAL EXPENDITURE	$140,916	$ 143,779	$197,732	$215,030